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1                   UNITED STATES PATENT AND TRADEMARK OFFICE

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3                   BEFORE THE BOARD OF PATENT APPEALS  
4                   AND INTERFERENCES  
5                   

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7                   Ex parte SHAWN WIEDERIN  
8                   

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10                   Appeal 2009-012683  
11                   Application 09/950,025  
12                   Technology Center 3600  
13                   

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15                   Decided: March 4, 2010  
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18                   Before WILLIAM F. PATE, III, LINDA E. HORNER, and  
19                   ANTON W. FETTING, *Administrative Patent Judges*.  
20  
21                   FETTING, *Administrative Patent Judge*.

22                   DECISION ON APPEAL

## STATEMENT OF THE CASE

2       Shawn Wiederin (Appellant) seeks review under 35 U.S.C. § 134 (2002)  
3   of a final rejection of claims 2-6, 8, 9, 12-16, 18, 19, 22-26, 28, 29, 32-36,  
4   38, 39, and 41-45 , the only claims pending in the application on appeal.

5 This is the second time this application has come before this panel. We  
6 affirmed the Examiner in the earlier decision dated October 23, 2007.  
7 Subsequent to that decision, all of the independent claims were amended.  
8 The single reference that was applied in the Final Rejection under the earlier  
9 appeal is not applied in the instant Final Rejection under appeal. Thus, the  
10 prior art issues presented in the earlier appeal are no longer before us.

11 We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b)  
12 (2002).

## SUMMARY OF DECISION<sup>1</sup>

14 We AFFIRM.

## THE INVENTION

16 The Appellant invented a way to allow a user to perform a transfer of  
17 currency or monetary funds from one on-line financial account to one or  
18 more on-line financial account(s). After a user's account profile is created,  
19 all the necessary steps to verify the profile, the account's fund availability,

<sup>1</sup> Our decision will make reference to the Appellant’s Appeal Brief (“App. Br.,” filed February 12, 2009) and Reply Brief (“Reply Br.,” filed June 3, 2009), and the Examiner’s Answer (“Ans.,” mailed April 15, 2009), and Final Rejection (“Final Rej.,” mailed August 19, 2008).

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1 security related functions and debiting and crediting of the respective  
2 accounts can be initiated from a user device. (Specification 2:¶ 0004).

3 An understanding of the invention can be derived from a reading of  
4 exemplary claim 43, which is reproduced below [bracketed matter and some  
5 paragraphing added].

6 43. A method for performing a monetary transaction,  
7 comprising:  
8 [1] receiving  
9 payee identification information,  
10 user information, and  
11 amount information  
12 from a wireless device associated with a user, [sic ;]  
13 [2] identifying a first account associated with the user  
14 based on the user information;  
15 [3] prompting a payee device associated with the payee,  
16 for information relating to a second account  
17 associated with the payee  
18 based on the payee identification information; and  
19 [4] transferring funds based on the amount information  
20 between the first account and the second account.  
21

## 22 THE REJECTIONS

23 The Examiner relies upon the following prior art:

Sacks US 2002/0016765 A1 Feb. 7, 2002

Kim US 2005/0086164 A1 Apr. 21, 2005

24 Claims 12-16, 18-19, 22-26, 28-29, and 43-44 stand rejected under 35  
25 U.S.C. § 102(e) as anticipated by Sacks.

26 Claims 2-6, 8-9, 32-36, 38-39, 41-42, and 45 stand rejected under 35  
27 U.S.C. § 103(a) as unpatentable over Sacks, Kim, and Official Notice.

1 ARGUMENTS

2 *Claims 12-16, 18-19, 22-26, 28-29, and 43-44 rejected under 35 U.S.C.  
3 § 102(e) as anticipated by Sacks.*

4 Claims 43 and 44 are the only independent claims and these are the only  
5 claims the arguments are directed to. As to each of these claims, the  
6 Appellant argues that Sacks does not describe receiving payee identification  
7 information, user information, and amount information from a wireless  
8 device associated with a user. Appeal Br. 11 and 16.

9 *Claims 2-6, 8-9, 32-36, 38-39, 41-42, and 45 rejected under 35 U.S.C.  
10 § 103(a) as unpatentable over Sacks, Kim, and Official Notice.*

11 Claims 42 and 45 are the only independent claims. These are the only  
12 claims the arguments are directed to. As to each of these claims, the  
13 Appellant argues that Sacks and Kim do not disclose or suggest receiving  
14 payee identification information, user information, and amount information  
15 from a wireless device associated with a user. Appeal Br. 21 and 27.

16 As to claim 42, the Appellant further argues that both Sacks and Kim fail  
17 to describe the user information identifying the wireless device, a first  
18 account associated with the user based on the user information including the  
19 received wireless device identification information, a second account  
20 associated with the payee based on the payee identification information.  
21 The Appellant further argues the references do not transfer funds based on  
22 the amount of information between the first account and the second account,  
23 and send a notification of the transfer of the funds to the wireless device.  
24 The notification includes an itemization of goods or services associated with

1 the transfer. The Appellant also contends that the Examiner's Official  
2 Notice does not remedy the deficiencies in the references. Appeal Br. 21.

3 As to claim 45, the Appellant further argues that the references do not  
4 describe identifying (1) a first account associated with a payer and (2) a  
5 second account associated with a payee, the identification based on the  
6 received monetary transaction information including the received device  
7 identification information. Appeal Br. 30.

8 **ISSUES**

9 The issue of whether the Examiner erred in rejecting claims 12-16, 18-  
10 19, 22-26, 28-29, and 43-44 under 35 U.S.C. § 102(e) as anticipated by  
11 Sacks turns on whether Sacks describes receiving payee identification  
12 information, user information, and amount information from a wireless  
13 device associated with a user.

14 The issue of whether the Examiner erred in rejecting claims 2-6, 8-9, 32-  
15 36, 38-39, 41-42, and 45 under 35 U.S.C. § 103(a) as unpatentable over  
16 Sacks, Kim, and Official Notice turns on the resolution of the first issue, and  
17 whether the references describe or make it predictable to add the further  
18 limitations argued by the Appellant.

19 **FACTS PERTINENT TO THE ISSUES**

20 The following enumerated Findings of Fact (FF) are believed to be  
21 supported by a preponderance of the evidence.

22

23

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1        *Facts Related to the Prior Art*

2        *Sacks*

3        01. Sacks is directed to processing, at a third-party site, a buyer's  
4           payment for an electronically conducted transaction with an online  
5           seller. Sacks ¶ 0001.

6        02. Sacks describes implementing its buyer side device with a  
7           handheld computer. Sacks ¶ 0014 and ¶ 0019. Its data  
8           transmissions use electromagnetic carrier waves. Sacks ¶ 0015.  
9           The data from this device may be a wireless phone using the  
10           wireless access protocol. Sacks ¶ 0019.

11        03. Sacks transmits product information such as item identifier,  
12           price and quantity purchased, and seller information such as  
13           identifier and address from the buyer's device to a third party.  
14           Sacks ¶ 0017. The user's identifier is transmitted to the third  
15           party payment processor. ¶ 0023.

16        04. Sacks' buyer information is transmitted to the third party  
17           payment processor. Sacks ¶ 0021. This is done to transfer funds  
18           from the buyer's account to the seller's account. Sacks ¶ 0024.

19        05. The buyer's account is linked to the buyer's identifier, email  
20           address or phone number. Sacks ¶ 0024.

21        06. The seller's identifier and account number is also passed to the  
22           third party payment processor by the buyer's connection. Sacks ¶  
23           0024.

24

1 *Kim*

2 07. Kim is directed to using a mobile phone as a tool to pay a  
3 charge of goods or service rendered through approval of a mobile  
4 phone network. Kim ¶ 0002.

5 08. Kim describes automatically determining the caller's identity  
6 by the phone number and phone device a call originates from.  
7 Kim ¶¶ 0025-0028.

## PRINCIPLES OF LAW

## 9 *Anticipation*

10        "A claim is anticipated only if each and every element as set forth in the  
11 claim is found, either expressly or inherently described, in a single prior art  
12 reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628,  
13 631 (Fed. Cir. 1987). "When a claim covers several structures or  
14 compositions, either generically or as alternatives, the claim is deemed  
15 anticipated if any of the structures or compositions within the scope of the  
16 claim is known in the prior art." *Brown v. 3M*, 265 F.3d 1349, 1351 (Fed.  
17 Cir. 2001). "The identical invention must be shown in as complete detail as  
18 is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d  
19 1226, 1236 (Fed. Cir. 1989). The elements must be arranged as required by  
20 the claim, but this is not an *ipsissimis verbis* test, *i.e.*, identity of terminology  
21 is not required. *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990).

22 *Obviousness*

23 A claimed invention is unpatentable if the differences between it and  
24 the prior art are “such that the subject matter as a whole would have been  
25 obvious at the time the invention was made to a person having ordinary skill

1 in the art.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007); *Graham*  
2 *v. John Deere Co.*, 383 U.S. 1, 13-14 (1966).

3 In *Graham*, the Court held that that the obviousness analysis is  
4 bottomed on several basic factual inquiries: “[1] the scope and content of  
5 the prior art are to be determined; [2] differences between the prior art and  
6 the claims at issue are to be ascertained; and [3] the level of ordinary skill  
7 in the pertinent art resolved.” *Graham*, 383 U.S. at 17. *See also KSR*, 550  
8 U.S. at 406. “The combination of familiar elements according to known  
9 methods is likely to be obvious when it does no more than yield predictable  
10 results.” *KSR*, 550 U.S. at 416.

## 11 ANALYSIS

12 *Claims 12-16, 18-19, 22-26, 28-29, and 43-44 rejected under 35 U.S.C.*  
13 *§ 102(e) as anticipated by Sacks.*

14 The Appellant argues that Sacks does not describe receiving payee  
15 identification information, user information, and amount information from a  
16 wireless device associated with a user. This argument is answered by the  
17 plain reading of Sacks.

18 As to a wireless device, Sacks describes implementing its buyer side  
19 device with a handheld computer using electromagnetic carrier waves. The  
20 data from this device may be a wireless phone using the wireless access  
21 protocol. FF 02.

22 As to receiving payee identification information, user information, and  
23 amount information, Sacks transmits the seller’s identifier to the payment  
24 processor from the buyer’s device and transmits the user identifier and  
25 quantity and price information, also from the buyer’s device. FF 03 & 06.

1 In Sacks, the buyer corresponds to the claimed user and the seller  
2 corresponds to the claimed payee. The seller is the party to whom payment  
3 is made and is therefore the payee.

4 *Claims 2-6, 8-9, 32-36, 38-39, 41-42, and 45 rejected under 35 U.S.C.*  
5 *§ 103(a) as unpatentable over Sacks, Kim, and Official Notice.*

6 The Appellant repeats the argument from the novelty rejection and our  
7 analysis from the novelty rejection is applicable to these claims.

8 Claim 42 further requires the user information to include information  
9 identifying the wireless device, and that the payment processor identifies a  
10 first account associated with the user based on the user information  
11 including the received wireless device identification information, identify a  
12 second account associated with the payee based on the payee identification  
13 information, transfer funds based on the amount information between the  
14 first account and the second account, and send a notification of the transfer  
15 of the funds to the wireless device, the notification to include an itemization  
16 of goods or services associated with the transfer. The Appellant argues this  
17 is not described by the art. Appeal Br. 21.

18 In Sacks, the payment processor identifies the user and seller accounts  
19 based on identity information transmitted to the payment processor by the  
20 buyer's device. FF 03 - 06. The amount of funds based on the transaction  
21 amount is transferred from the buyer's account to the seller's account. FF  
22 04. The buyer's account may be identified by the buyer's phone number.  
23 FF 05. Kim describes automatically retrieving the phone number and phone  
24 device identifiers from an originating call to identify a customer. FF 08.  
25 The Examiner found that one of ordinary skill would have known to use

1 Kim's automatic phone identifier retrieval to find Sacks' phone number  
2 identifier for greater assurance of validity. Ans. 6. The Examiner took  
3 official notice of the notoriety and desirability of presenting an itemization  
4 of goods or services associated with the transfer. Ans. 6. We agree that  
5 such an itemization, conventionally referred to as an invoice, is a standard  
6 practice in commerce and therefore a predictable practice with Sacks. We  
7 also agree that the advantages of automated phone number retrieval  
8 described by Kim made its use with Sacks predictable.

9 Claim 45 further requires identifying that the accounts associated with a  
10 payer and a payee be based on the received transaction information  
11 including the received device identification information. The Appellant  
12 argues this is not described by the art. Appeal Br. 30. As we found *supra*,  
13 the phone number is an identifier for the buyer's account. The claim does  
14 not specify the manner in which the buyer's device is identified, and the  
15 phone number of a calling device is widely regarded as a means for  
16 identifying that device. Further, Kim describes using the phone device  
17 identifier as an additional mechanism for identifying a customer. FF 08.

18 **CONCLUSIONS OF LAW**

19 The Examiner did not err in rejecting claims 12-16, 18-19, 22-26, 28-29,  
20 and 43-44 under 35 U.S.C. § 102(e) as anticipated by Sacks.

21 The Examiner did not err in rejecting claims 2-6, 8-9, 32-36, 38-39, 41-  
22 42, and 45 under 35 U.S.C. § 103(a) as unpatentable over Sacks, Kim, and  
23 Official Notice.

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## DECISION

2

To summarize, our decision is as follows.

3

- The rejection of claims 12-16, 18-19, 22-26, 28-29, and 43-44 under 35 U.S.C. § 102(e) as anticipated by Sacks is sustained.
- The rejection of claims 2-6, 8-9, 32-36, 38-39, 41-42, and 45 under 35 U.S.C. § 103(a) as unpatentable over Sacks, Kim, and Official Notice is sustained.

5

6

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

7

10

AFFIRMED

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15 mev

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Address

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